

1 335 U.S. 331, 339 (1948).

2 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;
3 therefore, the application is granted.

4 **II. SCREENING**

5 “The court shall dismiss the case at any time if the court determines that … the action or
6 appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or
7 (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
8 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed IFP, whether or not the plaintiff is
9 incarcerated. *See Lopez*, 203 F.3d at 1129; *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001)
10 (per curiam).

11 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
12 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks
13 that language. Thus, when reviewing the adequacy of a complaint under 28 U.S.C. §
14 1915(e)(2)(B)(ii), the court applies the same standard as is applied under Rule 12(b)(6). *See*
15 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a
16 plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is
17 the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”).
18 Review under 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of
19 America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

20 In reviewing the complaint under this standard, the court must accept as true the
21 allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve all doubts
22 in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted).
23 Allegations in pro se complaints are “held to less stringent standards than formal pleadings drafted
24 by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation marks and citation
25 omitted).

26 A complaint must contain more than a “formulaic recitation of the elements of a cause of
27 action;” it must contain factual allegations sufficient to “raise a right to relief above the speculative
28 level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading must contain

1 something more ... than ... a statement of facts that merely creates a suspicion [of] a legally
2 cognizable right of action." *Id.* (quoting 5 C. Wright & A. Miller, Federal Practice & Procedure §
3 1216, at 235-36 (3d ed. 2004)). At a minimum, a plaintiff should state "enough facts to state a
4 claim to relief that is plausible on its face." *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662,
5 678 (2009).

6 A dismissal should not be without leave to amend unless it is clear from the face of the
7 complaint that the action is frivolous and could not be amended to state a federal claim, or the
8 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
9 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

10 Plaintiff's complaint names the Social Security Administration, and requests review of the
11 denial of his Social Security disability claim. (ECF No. 1-1.)

12 Federal courts have sole jurisdiction to conduct judicial review of the Social Security
13 Administration's determination in this regard. *See 42 U.S.C. § 405(g)*. It is not clear from the
14 *pro se* complaint whether or not Plaintiff exhausted his administrative remedies with the Social
15 Security Administration, but that is an argument the defendant can raise if it becomes apparent
16 Plaintiff did not do so. Therefore, Plaintiff's complaint shall proceed.

17 **III. CONCLUSION**

18 (1) Plaintiff's application to proceed IFP (ECF No. 1) is **GRANTED**. Plaintiff is permitted
19 to maintain this action without the necessity of prepayment of fees or costs or the giving of security
20 therefor. This order granting IFP status does not extend to the issuance of subpoenas at government
21 expense.

22 (2) The complaint shall **PROCEED**. The Clerk is instructed to **FILE** the complaint
23 (ECF No. 1-1).

24 (3) The Clerk shall **SERVE** the Commissioner of the Social Security Administration by
25 sending a copy of the summons and complaint by certified mail to: (1) Office of the Regional Chief
26 Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 899, San Francisco, CA
27 94105-1545; and (2) the Attorney General of the United States, Department of Justice, 950
28 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.

1 (4) The Clerk shall ISSUE a summons to the United States Attorney for the District of
2 Nevada and deliver the summons and a copy of the complaint to the U.S. Marshal for service to
3 the U.S. Attorney's Office at 400 S. Virginia Street, Suite 900, Reno, Nevada 89501.

4 (5) Henceforth, Plaintiff, or counsel, shall serve upon the defendant, or the defendant's
5 attorney, a copy of every pleading, motion or other document submitted for consideration by the
6 court. Plaintiff shall include with the original paper submitted for filing a certificate stating the
7 date that a true and correct copy of the document was mailed to defendant or defendant's counsel.
8 The court may disregard any paper received by a district judge, magistrate judge, or clerk which
9 fails to include a certificate of service.

10 **IT IS SO ORDERED.**

11 DATED: July 30, 2018.

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WILLIAM G. COBB
14 UNITED STATES MAGISTRATE JUDGE

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